

**FEDERAL COMMUNICATIONS COMMISSION**  
**Washington, D.C. 20554**

In the Matter of	)	MB Docket No. 11-169
Basic Service Tier Encryption	)	
Compatibility Between Cable Systems and	)	PP Docket No. 00-67
Consumer Electronics Equipment	)	

**COMMENTS OF THE CITY OF BOSTON, MASSACHUSETTS**

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The City of Boston, Massachusetts (“Boston” or “City”), files these comments in response to the Notice of Proposed Rulemaking (“NPRM”) asking whether the Commission should exempt all-digital cable systems from the longstanding rule that bars a cable operator from encrypting the basic service tier.<sup>1</sup> The City files these comments to stress that before the Commission takes such action, it must ensure that doing so would not require consumers in Boston and across the nation to bear any additional burdens. Protecting consumers for—as the NPRM puts it—the “short run” is unacceptable. Instead, the Commission should require any operator encrypting the basic service to unequivocally commit to protect consumers for as long as the cable operator benefits from this change. In addition, Boston fears that the Commission underestimates the number of consumers that would be impacted. Among other things, it is not clear that the Commission has considered the impact this change would have on institutional cable viewers such as students in schools and workers in government buildings.

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<sup>1</sup> Notice of Proposed Rulemaking, FCC 11-153 (October 14, 2011).

**I. ALLOWING CABLE OPERATORS TO ENCRYPT THE BASIC SERVICE TIER WOULD RESULT IN REAL AND SUBSTANTIAL BENEFITS FOR CABLE OPERATORS, BUT ALSO REAL AND SUBSTANTIAL COSTS FOR CONSUMERS.**

Allowing cable operators to encrypt the basic service tier would result in real and substantial benefits for cable operators, and equally real and substantial costs for consumers. Cable operators would see real benefits.<sup>2</sup> A major benefit for operators is that “encrypting the basic service tier in an all-digital system will eliminate the need for many service appointments because it will allow cable operators to enable and disable cable service remotely.”<sup>3</sup> Cable operators would also benefit from enhanced security as the operator could “ensure that only paid subscribers are able to access the service by authorizing and deauthorizing CableCARDs as people subscribe or cancel cable service.”<sup>4</sup>

For consumers, however, the change would impose substantial costs. It would prevent consumers from using personal equipment that they purchased to view or record basic tier programming under the assumption that the basic service tier would continue to be unencrypted.<sup>5</sup> This would burden both the manufacturer and the purchaser of this equipment. The NPRM also correctly recognizes that basic service tier encryption would require any subscriber that uses a television with a clear-QAM tuner without a set-top box to lease such a set-top box for every television on which the subscriber would like to watch a basic service tier channel.<sup>6</sup> As

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<sup>2</sup> Further, the NPRM makes clear that encryption would not be mandated, but would be an elective decision by the individual cable operator. NPRM ¶ 14.

<sup>3</sup> NPRM at ¶ 5.

<sup>4</sup> *Id.*

<sup>5</sup> NPRM at ¶ 6.

<sup>6</sup> *Id.*

discussed, *infra*, the City fears that the Commission has underestimated the number of set-top boxes that subscribers would be required to lease.

## **II. THE COMMISSION MUST ENSURE THAT CONSUMERS ARE KEPT WHOLE FOR THE LONG RUN.**

If the Commission were to allow cable operators to encrypt the basic service tier on their digital systems, it must take steps to protect consumers in the long run. Unfortunately, the NPRM tentatively concludes that cable operators should receive these benefits subject only to the duty “to ameliorate any potential harm to consumers in the *short run*.”<sup>7</sup> This is unacceptable. Since cable operators will enjoy the benefits of encryption for the long run, consumers must be equally protected. The City is concerned that basic service tier encryption could undercut locally-negotiated benefits and impact a significant number of subscribers and institutional users.

### **A. Cable Operators Should Not Be Permitted To Undercut Negotiated Senior Discount and Lifeline Services Negotiated in Local Franchises.**

As a condition of granting a waiver to Cablevision’s New York City systems,<sup>8</sup> the Media Bureau required Cablevision to offer: “(a) current basic-only subscribers up to two set-top boxes or CableCARDS without charge for up to two years, (b) digital subscribers who have an additional television set currently receiving basic-only service one set-top box or CableCARD without charge for one year, and (c) current qualified low-income basic-only subscribers up to

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<sup>7</sup> NPRM at ¶ 8. *See also* NPRM at ¶ 12 (“We therefore propose that cable operators that choose to encrypt the basic service tier in their service area provide to subscribers, without charge for a **limited time**, devices that can decrypt the basic service tier as described above.” (emphasis added)); NPRM ¶ 14 (“Because cable operators may decide whether they wish to encrypt under the requisite regulatory conditions (i.e., provide set-top boxes at no cost to affected subscribers for a limited period), we see no statutory or constitutional constraints to imposing such a requirement.”).

<sup>8</sup> *Cablevision Systems Corporation’s Request for Waiver of Section 76.630(a) of the Commission’s Rules*, 25 FCC Rcd. 134 (MB 2010) (“*Cablevision Waiver*”).

two set-top boxes or CableCARDs without charge for five years.”<sup>9</sup> In the NPRM, the Commission proposes to use the same model on a national basis.<sup>10</sup> Boston objects to this approach because it would subject consumers to costs after arbitrary periods.

Boston has negotiated a Senior Discount plan with both of its franchised cable operators through at least 2016. This program is not a “current qualified low-income” program, but is open to all Boston-based seniors. Under the Cablevision waiver terms, seniors in Boston might not enjoy the full protection of the franchise that the City worked so hard to negotiate. They could be required to lease additional set-top boxes at additional costs, undermining the fixed price for which the City negotiated. Such a result is unacceptable to the City of Boston and should be equally unacceptable to the Commission.

**B. The Commission May Considerably Underestimate the Number of Consumers That Would Be Adversely Affected.**

The City fears that the Commission may considerably underestimate the number of consumers that would be adversely affected by this change.

To be sure, the industry downplays the potential harm. Cable operators argue that the overwhelming majority of subscribers to all-digital systems already have a set-top box or CableCARD-equipped retail device and therefore would be unaffected by the basic service tier encryption.<sup>11</sup> The Commission seems to rely heavily upon the experience of Cablevision, which has more than 700,000 subscribers in New York City and deployed only 739 free set-top boxes to basic service tier subscribers as a condition of its basic service tier encryption waiver.<sup>12</sup> The Commission also cites to SNL Kagan research showing that three-quarters of cable subscribers

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<sup>9</sup> *Id.* at ¶¶ 5, 15.

<sup>10</sup> NPRM at ¶ 12.

<sup>11</sup> NPRM at ¶ 5.

<sup>12</sup> NPRM at ¶ 4 n.20.

have at least one device in their home that can both demodulate and decrypt digital cable services.<sup>13</sup>

But even if it were true that three in four Americans would be unaffected, a great number of consumers would be. In addition, many cable homes that have at least one device would be negatively impacted should they choose to watch basic tier programming on non-primary devices, including guest room television sets and television sets in kitchens.<sup>14</sup>

Moreover, the NPRM does not appear to address basic tier viewers in government institutions such as schools and public buildings. Boston and many other cities have negotiated franchises that require the cable operator to provide free services to schools and government buildings. The Commission does not address the impact on such institutional viewers. Where schools and other public buildings receive basic service under a cable franchise, failure to protect such consumers could force local governments to lease converter boxes (often multiple units) from the operators. These costs are often not addressed in existing franchise agreements. As a result, this change could impose sizable costs on schools and local communities, which are not in a position to bear these costs under current budget constraints.

From other Commission proceedings, Boston is aware of the impact that converting channels to a digital format can have on institutional viewers,<sup>15</sup> and we can only assume that basic tier encryption would lead to similar challenges.<sup>16</sup> As with residential consumers, cable

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<sup>13</sup> NPRM at ¶ 8.

<sup>14</sup> NPRM ¶ 4 n.20.

<sup>15</sup> *See, e.g.*, Status Report of the McAllen Independent School District, MB Docket No. 09-13 (Oct. 18, 2010).

<sup>16</sup> The City understands that converter boxes might not be the only issue implicated by encryption. Recently Time Warner moved its system to a digital format in certain South Texas communities. While the parties reached a settlement on the digital migration, there were nonetheless lessons learned in the proceeding. One important lesson is that schools often have

operators may be able to address this issue by providing free converter boxes. It does not appear that any of the waivers granted to date have provided for such boxes for institutional users. Boston would object to it, or any other government, being forced to continue to receive service when the operator is the primary beneficiary of the rule change.

### **III. THE COMMISSION MUST ENSURE THAT ANY SOLUTION AVOIDS OTHER PROBLEMS.**

Any solution that the Commission crafts must be carefully crafted to avoid other problems.

First, the Commission must ensure that operators cannot undo the “free box” model. The Commission’s CableCARD proceeding recognizes that operators can thwart a Commission rule by attaching other charges such as “an additional outlet charge,” a “service delivery fee,” or some other charge. The Commission should clarify that: (1) cable operators cannot create other charges related to the encrypted basic service tier; (2) consumers have the right to request Commission review; and (3) the Commission will investigate any claims of violations. The filing of a complaint with the Commission should require the operator in question to stay any new charges until the Commission has determined that such charges are not a work around by the operator. Should the Commission find a violation, the Commission should revoke the encryption authority and impose penalties.

Second, the Commission should ensure that PEG programming is not adversely affected by this action. The NPRM asks “whether the commission should include IP video and other non-

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old wiring that cannot support the higher frequencies that digital transmission requires. Should the encryption process result in such a higher or different frequency transmission—or a similar technical issue—such that not all institutional users can access the programming even with a “free box,” the cable operator should be required to make such users whole.

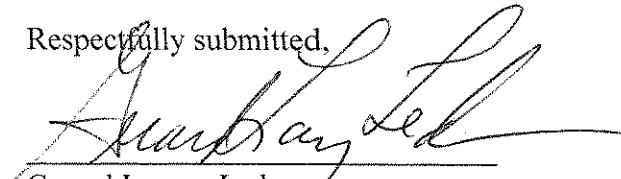


traditional cable video services in its definition of an all-digital system.”<sup>17</sup> The FCC should rule that AT&T’s U-verse is a cable system,<sup>18</sup> and it should make clear here that no system should receive the benefits of this rule unless it fulfills *all* the requirements of a cable system, including provision of PEG on same basis as other channels. The Commission should also clarify that a cable operator cannot charge a PEG operator to have its PEG programming encrypted.

#### IV. CONCLUSION

Before it allows cable operators to encrypt the basic service tier on all-digital systems, the Commission should take steps to ensure that consumers—including institutional users—are protected from any adverse effects arising out of such a change for the long term.

Respectfully submitted,



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<sup>17</sup> NPRM at ¶ 9.

<sup>18</sup> *Petition for Declaratory Ruling of Alliance for Community Media, et al.*, MB Docket 09-13 (Jan. 30, 2009).